

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

**RICK SHIMITZ and DARCEY SHIMITZ,)
on their own behalf and as natural)
guardian, parent and next friend to)
CHAD SCHROEDER,)**

Plaintiffs,)

v.)

**TYSON FRESH MEATS, INC., f/k/a)
IBP, Inc.)**

Defendant.)

CASE NO. 8:01CV27

MEMORANDUM AND ORDER

This matter is before the Court on the unopposed Motion to Continue Trial filed by the Plaintiffs, and the related motion filed by the Defendant for an order removing the “natural guardian, parent, and next friend” designation from the caption and requiring Chad Schroeder to proceed individually as a party plaintiff because he has reached the age of majority.

The Plaintiffs move for a continuation of the pretrial conference, scheduled for June 6, 2007, and the trial, currently scheduled to commence on July 17, 2007. The unopposed motion states that Schroeder is overseas on active duty in the United States Air Force, and the motion indicates that no one has been in recent contact with him though attempts to contact him have been made. If the requirements of 50 U.S.C. App. §522(b)(2) can be satisfied, then the Plaintiffs have indicated that they may seek a stay of these proceedings.

In response to IBP’s motion to remove the next friend designation, Plaintiffs state that they have not been able to reach Chad Schroeder to obtain direction from him as to how he wishes to proceed. While it does not appear that the Plaintiffs contest that Chad

Schroeder has reached the age of majority, the Court will require evidence as to that fact. Accordingly,

IT IS ORDERED:

1. On or before June 8, 2006, Plaintiffs shall submit an affidavit of either Darcey Shimitz or Chad Schroeder that sets forth:
 - a) Chad Schroeder's date of birth;
 - b) whether Schroeder has indicated his preference, to family or counsel, to proceed in this case either individually or through Rick and Darcey Shimitz as his natural guardians, parents and next friends, or to withdraw from the litigation;
 - c) relevant facts concerning Schroeder's military service, including his date of enlistment, his branch of service, his location, and any information regarding his anticipated leaves and expected discharge date, if any.
 2. Based upon the information contained in the affidavit, the Court will consider the unopposed motion to continue trial; and
 3. Upon consultation with Magistrate Judge Gossett, the pretrial conference scheduled for June 7, 2007, is postponed until further order of the Court.
- DATED this 30th day of May, 2007.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge